

An Interim Ordinance Declaring an Emergency and Adopting a Moratorium on the Acceptance of Applications for Wetland Mitigation Banks on Lands Zoned Ag-NRL

WHEREAS pursuant to the Growth Management Act (GMA), Chapter 36.70A RCW, the Skagit County Board of Commissioners has adopted the Skagit County Comprehensive Plan and Title 14, the Unified Development Code, for all unincorporated areas of Skagit County; and

WHEREAS RCW 36.70A.390 and RCW 36.70.795 authorize the Board of County Commissioners to adopt moratoriums, interim zoning ordinances, and interim official controls as methods to preserve the status quo while new plans and regulations are being developed; and

WHEREAS RCW 36.70A.390 and RCW 36.70.795 permit the County to adopt such measures without notice and public hearing when deemed appropriate to promote the public health, safety and welfare, provided that the County holds a public hearing within sixty (60) days after the adoption of this interim ordinance; and

WHEREAS Skagit County has declared that natural resource lands, including agricultural and forest lands, are the cornerstone of the County's economy, community, and history, and as such, their protection and enhancement is of paramount importance to Skagit County and its citizens; and

WHEREAS Skagit County has in general declared that non-agricultural commercial uses should be discouraged on lands designated as Agricultural Natural Resource Lands (Ag-NRL); and

WHEREAS a steady degradation of Skagit County's agricultural land base by conversion of agricultural lands to other uses would have far-reaching effects on the stability and viability of Skagit County's agricultural economy; and

WHEREAS Skagit County has adopted a broad range of GMA Comprehensive Plan policies and development regulations that aim to ensure the long-term conservation of agricultural lands; and

WHEREAS Chapter 14.24 of the Skagit County Code, the County's Critical Areas Ordinance, contemplates the use of wetland mitigation banks to provide off-site mitigation for loss of wetlands when on-site mitigation is not an option (SCC 14.24.250(4)); and

WHEREAS, under current Skagit County Code, wetland mitigation banks may be permitted as a hearing examiner special use on lands designated Ag-NRL as a habitat enhancement and/or restoration project (SCC 14.16.400(4)(c)); and

WHEREAS other jurisdictions, including King County, have recently placed restrictions on the ability to convert agricultural land for the purpose of wetland mitigation banking; and

WHEREAS a reasonable fear exists that Skagit County, with its large agricultural land base, could become the focus of a large number of applications for wetland mitigation banks, thereby degrading and endangering Skagit County's agricultural land base and economy; and

WHEREAS the Board of County Commissioners finds that an emergency exists within the County, and the immediate adoption of an interim ordinance effecting a moratorium on applications for special use permits for the construction of wetland mitigation banks on lands designated Ag-NRL is necessary for the immediate preservation of the public peace, health, and safety and for the support of county government and its existing institutions; and

WHEREAS this action is taken consistent with the State Environmental Policy Act (SEPA) provisions at WAC 197-11-880 regarding emergency actions.

NOW, THEREFORE, BE IT ORDAINED:

The Board of County Commissioners adopts the following findings of fact:

1. An interim moratorium is a recognized technique to stem a potential rush for permits whenever a community decides to change its planning ordinances in order to prevent development inconsistent with the ultimate planning design that might be approved.
2. The United States Supreme Court in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), held that moratoria are essential tools for successful development and re-affirmed that moratoria are not per se takings.
3. In allowing wetland mitigation banks as a Hearing Examiner special use on Ag-NRL lands, the regulations in effect do not adequately ensure the protection of Ag-NRL lands as agricultural lands of long-term commercial significance in Skagit County.
4. Skagit County intends to develop permanent regulations to address the deficiencies in the current regulations.
5. This interim ordinance is exempt from the public participation requirements of the GMA, subject to the requirements of RCW 36.70A.390.
6. An emergency exists and the immediate adoption of a moratorium imposed by this ordinance is necessary for the protection of the public health, safety, property, and peace.

NOW THEREFORE, BE IT FURTHER ORDAINED:

Section 1. The Board of County Commissioners hereby declares a moratorium providing that no special use permit applications for wetland mitigation banks on Ag-NRL designated lands shall be accepted by the County.

Section 2. For the purposes of this ordinance, a “mitigation bank” shall be defined as in SCC 14.04. This definition shall not be construed to prevent habitat restoration projects that do not involve off-site compensatory mitigation for similar resources.

Section 3. This ordinance shall take effect immediately upon passage by the Board of County Commissioners.

Section 4. The moratorium shall be effective for six (6) months.

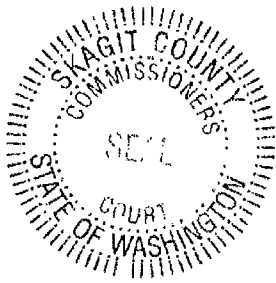
Section 5. The moratorium may be renewed for one or more six (6) month periods if a subsequent public hearing(s) is held and findings of fact are made prior to each renewal.

Section 6. This ordinance shall not apply to any applications vested before the effective date of this ordinance. An application shall be vested pursuant to Skagit County Code 14.02.050 when the application is deemed complete pursuant to Skagit County Code 14.06.090.

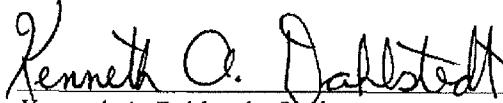
Section 7. If any section, sentence, clause, or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 8. The Board of County Commissioners shall hold a public hearing on March 17, 2009 at 9:00 a.m. to 11:00 a.m., in the Commissioners Hearing Room, 1800 Continental Place, Mount Vernon, Washington, for the purpose of hearing public testimony on this matter in accordance with RCW 36.70A.390.

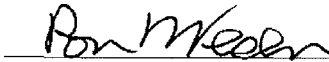
WITNESS OUR HANDS AND THE OFFICIAL SEAL OF OUR OFFICE this 9th day of February, 2009.



**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**


Kenneth A. Dahlstedt, Chairman


Sharon D. Dillon, Commissioner


Ron Wesen, Commissioner

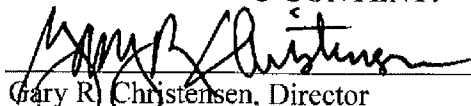
ATTEST:


Clerk of the Board

APPROVED AS TO FORM:


Will Honea, Chief Civil Deputy
Skagit County Prosecuting Attorney

APPROVED AS TO CONTENT:


Gary R. Christensen, Director
Planning & Development Services